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Supreme Court of the United States

OCTOBER TERM, 1931

Nos. 788 and 787

SOUTHERN RAILWAY COMPANY, AND SOUTHERN RAILWAY, Carolina Division, *Petitioners,*

versus

MARY O. YOUNGBLOOD, AS ADMINISTRATRIX OF THE ESTATE OF CLEVELAND J. YOUNGBLOOD, *Deceased.*

AND

SOUTHERN RAILWAY COMPANY, AND SOUTHERN RAILWAY, Carolina Division, *Petitioners.*

versus

MARY ELIZABETH DANTZLER, AS ADMINISTRATRIX OF THE ESTATE OF LAWRENCE KEITT DANTZLER, *Deceased.*

BRIEF FOR THE RESPONDENTS.

WILLIAM C. WOLFE,
Attorney.
EDGAR A. BROWN,
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STATEMENT OF THE CASE.

Two cases involving the same facts,—argued together.

Time: January third 1924, about 9 a. m.

Place: Just West of Orangeburg, S. C., on the Charleston-Columbia line of Southern Railway.

Head-on collision in which Conductor Youngblood and Engineman Dantzler of one train, and the conductor, engineman and fireman of the other train were killed.

These actions under Federal Employer's Liability Act to recover damages for wrongful deaths of Dantzler and Youngblood.

Verdicts, affirmed by State Supreme Court, in each case for $12,500.00.

There is but one practical question involved, namely, were such alleged wrongful deaths due to the actionable negligence of the railroad?

The statement of facts contained in the petitioner's brief and petition are not complete and are argumentative; hence we crave reference to the Transcript of Record for a full, complete and correct statement of the facts and circumstances involved in the case.

SUMMARY OF ARGUMENT.

We contend that the Transcript of Record contains abundant evidence, direct and circumstantial, showing that the wrongful deaths of the intestate employes were due to the actionable negligence of the railroad.

We further contend that if such deaths were not occasioned by the sole negligence of the railroad, then at least by its contributory negligence.

We also submit that the verdict and judgment entered thereon are supported by ample testimony of actionable negli-

gence; and that the amount of the verdicts is reasonable and temperate.

We further submit that the Caldine case, so strongly relied upon by Petitioners, is inapplicable and is to be clearly differentiated from the cases now before the Court.

We earnestly contend that under the evidence in the Record measured by the applicable rules of law we are entitled to have the petitions for writs of certiorari denied.

ARGUMENT.

An extra freight train became disabled at Ft. Motte on the Charleston-Columbia division of the Southern Railway.

There was another extra freight train number 783 moving in the opposite direction, and then East of Ft. Motte.

During the night Conductor Youngblood and Engineman Dantzler had been operating a switch engine in the Branchville yards about midway between Charleston and Columbia. They had completed their work about 5 a. m., and had retired. About 8 a. m. they were aroused and directed to proceed with their switch engine to Ft. Motte to pull the disabled freight train thence westward to Columbia.

The train order given them read:

"Extra 723 east gets this order and meet extra 483 west at Orangeburg. Engine 483 run extra from Branchville to Andrews."

This order was numbered 18; was sent from the dispatcher's office in Charleston, S. C., at 8:01 a. m.; and was addressed to the operators at Branchville and Orangeburg.

A copy was given Dantzler and Youngblood at Branchville before starting.

Being addressed to the "operator" at Orangeburg he should have made five copies, keeping one for his office files, and delivering two to Dantzler and Youngblood on arrival,

and the other two to the conductor and engineman of extra 723 when they arrived (R. pp. 13, 14, 15,—references are to Youngblood Transcript).

But the operator Jones at Orangeburg negligently failed to make five copies, making only three (R. ff. 66-67, pp. 60-1).

When operator Tison succeeded operator Jones at Orangeburg at 8:00 a. m. Jones gave him only three copies (R. ff. 68-9, pp. 62-3).

The two copies for Youngblood and Dantzler which they ought to have gotten when they reached Orangbeurg, but did not get, are known as middle orders and are sent to the meeting point designated to members of both crews as required by the Rules as a matter of precaution and safety (R. p. 12).

Between Branchville and Ft. Motte on that morning there were five trains: the disabled train at Ft. Motte, extra 723, the local freight standing on the track at Orangeburg, passenger number 12 at Orangeburg, and extra 483.

The weather was phenomenally foggy, of which the dispatchers in Charleston had been warned by the operator at Rowesville which is between Branchville and Orangeburg (R. f. 9; and p. 43).

As 483 (Youngblood and Dantzler) approached the station at Orangeburg the required whistle signals were given; operator Tison on duty there and seeing the approach of extra 483 and having no orders as required by the rules for its crew called Dispatcher Rogers in Charleston and told him that extra 483 was approaching and wanted to know what to do with "her" (R. f. 48; pp. 43-44; and also ff. 72-73; pp. 66-67).

It is so highly important that we quote the testimony of Dispatcher Rogers and operator Tison on this point:

Examination of witness Rogers:

"Q. Now, after 483 had executed the movement at the packinghouse track, what was the next thing you heard in reference to this train movement?

A. I asked the operator at Orangeburg if extra 483 was coming, * * * *.

Q. What did he say?

A. That it was coming.

Q. What did you tell him?

A. To clear him and go to west end of the passing track and wait for number 723. (R. pp. 43-44)."

Examining Mr. Tison, the operator:

"Q. When you saw 483 coming what did you do?

A. I told the dispatcher he was coming.

Q. What did the dispatcher tell you?

A. To clear him and let him go to the east end of pass track.

Q. He didn't tell you to tell him anything?

A. No, sir." (R. p. 64).

Now it is to be remembered that trains are moved on this line by orders from the dispatcher in Charleston (R. pp. 12-65).

Also by semaphore signals operated at the stations and by clearance cards to be given by the operators.

Thus it is seen that the train crew have nothing to do with the movement of the train except to obey orders, signals and clearance card directions. The crew has no right to question such orders, signals, or directions. They have a right to assume that such orders and signals are safe, correct and proper, and must act on same unless the danger is immediate and obvious. If they saw a train meeting them which would collide "head-on" then they must stop and refuse to obey orders or signals which would send them into collision.

In the cases at bar the crew had a right to assume that the signals given by the operator were safe and correct, being semaphore signals (red board dropped) which indicated "proceed" and "clear track" ahead (R. p. 171).

There was a telegraph station between Orangeburg and Ft. Motte, their destination, namely, St. Matthews; and they had a right to assume when they were not given two copies of the meet or middle or safety order at Orangeburg, but on the contrary were given a semaphore signal to proceed as the track was clear, that other arrangements had been made by proper orders to have extra 723 (train moving in opposite direction) meet and pass at St. Matthews or some other local pass track, or that 723 had been delayed or held at St. Matthews or at some local pass track.

It could not be said that the crew of 423 was solely negligent, because they obeyed signals given by the operator.

Even if the crew was guilty of contributory negligence this could not under the Act bar recovery.

Nor can it be successfully contended, we think, that the operator at Orangeburg was free from fault and negligence in performing his duties.

The proper movement of extra train 483 would have been as follows: When the train approached the station at Orangeburg the whistle should be sounded four times,—this was done; if the operator had orders, which he ought to have had, but did not have in this case, the semaphore board should have been held at stop, and the operator when the train stopped ought to have delivered the order number 18 to the conductor and engineman of 483, which he did not and could not do as he had none, and in addition thereto *he should have held the board on stop* and *given the train crew a clearance card according to the rules* together which any verbal instructions from the dispatcher, who had supreme control over the movement of the train, but instead of this he dropped the board and let the train go by without giving the crew a clearance card, which was in violation of the rules,—these statements are in accord with the testimony of the two dispatchers and operator Tison (R. pp. 20, 35, 36, 49, 50, 51, 52, 59, 60, 73, 79, 80, 81).

Operator Tison admits that he dropped the red board from

stop to proceed, and did not give Youngblood and Dantzler a clearance card or any orders or the verbal instructions given by the dispatcher (R. pp. 79, 80). Mr. Tison says that instead of giving him a clearance card he gave him order to proceed,—to use his own language: "I gave him the board to proceed" (R. p. 80).

When the board is dropped from stop this is an order to proceed according to original order to where they were going, namely, to Ft. Motte to pull the disabled train thence to Andrews.

The clearance card is described by dispatcher Rogers (R. p. 60); and the form appears at page 150 of the Record.

When the board is dropped from red which means to white it means proceed; to use the language of Dispatcher Pearce, when the board is dropped from red to white *it means proceed*, that *the track is clear*, and *is a clear signal* (R. p. 36).

The semaphore is shown at page 171 of Record, and it will be noted that by this picture when the board is dropped it means: "Indication—proceed." "Name—Clear signal."

It was the right and duty of Dantzler and Youngblood to proceed when no orders, or clearance card, were given, and the board dropped from red to white (R. pp. 66 to 75).

It is clear that operator Jones violated his duty in failing to make five copies of the train order so that the crew of extra 483 would receive two copies on arrival.

It is also clear that operator Tison violated his duties or failed to perform his duties on the arrival of extra 483 at Orangeburg.

What were the duties of operator Tison in regard to the movement of extra 483 at Orangeburg just preceding the collision? We will let the dispatchers and operators answer in their own language:

Dispatcher (now Chief Dispatcher) Rogers testified:

"Q. Relative to the clearance which you authorized

operator Tison to give to the crew of 483 at Orangeburg, —what should Mr. Tison have done?

A. He should have given the crew a copy of the order, which we term a middle order, and copy 603 (clearance card) and a clearance card and understanding."

* * * * * * * * * * *

Q. In other words, Mr. Tison should have held the red board on him and caused him to stop, and then delivered to him two copies of the message?

A. Of the train order, yes sir.

* * * * * * * * * * *

Q. When you told the operator at Orangeburg (Tison) to clear him to the west end of the track, you expected that he would stop him and communicate with him?

A. Absolutely, yes, sir. That was the only way that he could get all of the information.

Q. This particular order supposing it was not addressed to the operator, was it the operator's duty to hold that order (train) there and hold the board on the train and stop it?

A. Yes, sir.

Q. When the board is red a clearance card should have been used?

A. Yes, sir". (R. pp. 52, 53).

Mr. Bellinger, another dispatcher for Southern Railway, testifying as an expert said:

"Q. * * * those two men on egine 483 were entitled to two copies of that order?

A. It was not there for them.

Q. They were entitled to it?

A. I agree with you that it should have been there.

Q. And they should have gotten it?

A. Yes, sir.

Q. And a clearance card too?

A. Yes, sir." (R. p. 132).

The undisputed testimony is that the operator did not have

or give them copies of the middle order; did not hold the red board on them, but dropped it to proceed; did not give them a clearance card as he ought to have done and as required by the rules, and could not and did not give them the verbal instructions of the dispatcher.

The crew of 483 when the red board was dropped and they were given the signal of clear track—proceed, and not given a clearance card we submit that they had a right to assume that the meet order had been changed and that they were entitled to proceed at least to the next telegraph station.

Extra trains are moved exclusively by train orders and signals, and the crew of 483 were duty bound to obey the signals given by the operator.

These cases are of a most unusual nature, and no other case involves similar facts and circumstances.

We submit that each of the cases arising under the Federal Employer's Liability Act on the question of actionable negligence should be considered and decided upon its individual facts and circumstances.

There were a number of unusual circumstances surrounding the movement of the extra 483 about the point of collision; there were five trains moving on a single track railroad within a very short distance; three of the trains were extras; a phenomenal fog prevailed at the time; and the trainmaster of the division happened to be there in the street crossing next to the station close to the semaphore and when the whistle was sounded he "highballed" them on and forward (R. pp. 110-111).

Several errors in train orders and signalling were admittedly made: The original train order was copied as three not five copies, providing no copy orders for crew of 483; operator Tison dropped the red board thus signalling, clear track — proceed, and did not stop them as was his duty; operator Tison failed to give the crew copies of the meet order as required by the Rules; and he also failed, worst of all, *to stop them* and *give them a clearance card* and the *instructions* ordered

to be given by dispatcher Rogers.

We submit that this constituted negligence and was a proximate cause of the deaths of the intestate employees.

If operator Tison had promptly performed his duties it is highly probable that the catastrophe would not have happened.

If such conduct and such failure to perform duty was not the sole cause of the wrongful deaths of the employees, then at least, as held by the South Carolina Supreme Court, it constituted contributory negligence on the part of the railroad, and brought the case well within the meaning of the Act, which gives a cause of action if the injury is due in whole or *in part* to the negligence of the railroad.

Accordingly we contend that the cases were properly submitted to the jury because there was evidence of actionable negligence which in whole or at least in part caused the deaths of the intestate employes.

The contention of the Petitioners that there could be no recovery because the employees had assumed the risk of such danger as caused their deaths is, we submit, without merit.

The decisions of this Court upon the question of assumption of risk in such cases are so clear and so plain that we will not undertake to state the rules of law deducible therefrom, but content ourselves by saying that when the operator at Orangeburg, Mr. Tison, negligently dropped the red board, giving the clear track-proceed signal, not stopping the train, and in failing to give the crew a clearance card, thus inducing, even ordering them to proceed to their destination, or at least to the next telegraph station, it could not be said that the crew had knowledge of any danger or extraordinary risk of danger, and knowledge, actual or imputed, is the foundation of the doctrine of assumption of risk.

Nor is there any merit in the contention that there is no evidence of financial loss to the beneficiaries.

It is to be remembered that both circumstantial as well as direct evidence is acceptable to prove an allegation.

The Record shows the age of the intestate employees as well as of the beneficiaries.

Also that the beneficiaries were dependent upon their intestate husbands and parents (R. p. 9 and 10).

The wages of the intestate employees was also proven in each case (R. p. 9).

We submit that it was not obligatory to offer in evidence any mortality tables,—it was for the jury to say what expectancy men of this age probably had; and how much would probably have been contributed to support of the beneficiaries who were dependent upon them.

We submit that none of the cases decided by this Court involving the question of actionable negligence under the Federal Employer's Liability Act are similar to the cases at bar in respect to surrounding facts and circumstances.

The case of Caldine, so strongly relied upon by counsel for petitioners, we submit is clearly different and can be clearly differentiated from the cases at bar.

The facts in the Caldine case (278 U. S. 139; 73 L. Ed. 224) briefly summarized are:

Caldine, a conductor, had a permanent written order requiring his train to meet and pass another train moving in the opposite direction at a stated place; the order further provided that it was to be permanent unless countermanded in writing; on the tragic day Caldine, the conductor, despite the order, which had not been countermanded as required, directed his train to go on, resulting in a head-on collision in which he lost his life. The Court properly held that there could be no recovery.

The syllabus in this case reads as follows:

"No recovery can be had under the Federal Employer's Liability Act for the death of a conductor who

orders his train to proceed when reaching a point where his written orders require him to pass a train from the opposite direction, which has not arrived, merely because other employees failed to notify him of a telephone communication from the conductor of the other train, that he has left the next available passing point."

In the Caldine case the conductors undertook to direct the movement of the train, resulting in the collision; whereas, train movements are under the direction of the dispatchers and operators.

In the cases at bar the conductor and engineman undertook to move the train in accordance with the orders and signals given by the dispatchers and operator at Orangeburg. Trains are properly moved by orders and signals given by the dispatchers and operators. If erroneous orders or signals are given or omitted by the dispatchers or operators, as in the instant cases, this constitutes negligence.

If the conductors, who had no right to direct the movement of the trains, this being entirely within the authority of the dispatchers and operators, and injury or death ensues, then, as in the Caldine case, they must be held to be the authors of their own wrongs.

We submit that the petitions for the writs ought to be denied.

Respectfully submitted,

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